

**IDAHO  
PUBLIC UTILITIES  
Commission**

DOCKETED FOR REVIEW

Cecil D. Andrus, Governor

**Statehouse, Boise, Idaho 83720-6000**

Marsha H. Smith, President  
Dean J. (Joe) Miller, Commissioner  
Ralph Nelson, Commissioner

July 29, 1994

VIA FEDERAL EXPRESS

Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

RECEIVED  
AUG 1 1994  
FCC MAIL ROOM

RE: CC Docket No. 92-77, Further Notice of Proposed Rulemaking

Dear Secretary:

Enclosed for filing is an original and nine (9) copies of the Idaho Public Utilities Commission's comments in the above-referenced docket.

Please acknowledge receipt of this document by date-stamping the duplicate copy of this letter and returning it in the enclosed self-addressed, stamped envelope.

Sincerely,

Donald L. Howell, II  
Deputy Attorney General

JRL-SEARCY.DH

No. of Copies rec'd  
List ABCDE

029

DOCKETED COPY ORIGINAL

RECEIVED

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

NOV 1 1994

IN THE MATTER OF )

FCC MAIL ROOM

BILLED PARTY PREFERENCE )  
FOR 0+ INTERLATA CALLS )

CC DOCKET NO. 92-77

FURTHER NOTICE OF  
PROPOSED RULEMAKING

COMMENTS OF  
THE IDAHO PUBLIC UTILITIES COMMISSION

INTRODUCTION

The Idaho Public Utilities Commission (IPUC) supports the Commission's examination of Billed Party Preference (BPP). The IPUC believes consumers have not received the benefit of competition among operator services providers (OSPs) and payphone providers. Truly competitive rates for such services will not materialize until the OSPs and payphone providers are forced to compete for the caller—not just the right to serve public payphone locations. BPP enables the calling party to become the OSP's primary customer.

Adoption of BPP would also reduce consumer confusion regarding access code dialing patterns. The IPUC recommends BPP be required by the FCC on all interstate 0+ calls (including calls from institutions of confinement) with rules that prohibit bypass or dial-around conversion of the call from 0+ to 1+. Finally, the IPUC cautions the Commission from preempting state authority concerning the implementation of BPP on an intrastate level.

IPUC COMMENTS  
CC 92-77

## BACKGROUND

Competition has not been able to consistently protect consumers from high prices and/or deceptive practices by some OSPs and payphone providers. Effective competition is generally enhanced when consumers can obtain cost information about calling services and rates thereby avoiding OSPs that charge high rates or practice deceptive pricing. Consumer avoidance of such providers should force those companies to react to the loss of business by ceasing unfair marketing practices, lowering rates and improving service.

However, consumers cannot always make informed decisions about OSP rates and services because they cannot obtain all relevant information. Hotels, motels, hospitals, college dorms and institutions of confinement are examples of locations where OSPs and payphone vendors can still employ tactics that prevent consumers from making calls through their carrier of choice. Technological restrictions (blocking access to alternative carriers); deception (quoting incorrect or incomplete rates to the consumer); and taking advantage of consumer naivete (consumers don't know how to access alternative carriers) are still being used routinely to force consumers into using the provider chosen by the premise owner instead of the carrier preferred by the customer.

Without BPP it is unlikely that these circumstances will change. First, competitive pressure on OSPs and payphone providers actually works against consumers. In relative terms, competitive pressure exerted by premise owners for high commissions is stronger than competitive pressure from consumers for reasonable rates. OSPs and payphone vendors count on the consumer being transient, unknowledgeable about rates and/or dialing codes, or otherwise

ineffective in avoiding the use of its presubscribed OSP. They cater instead to the premise owner's desire for high commissions to get the contract to provide payphone service to the site. The amount of commissions an OSP or payphone vendor pays to a site owner generally determines how much the consumer pays for a call. Higher commissions result in higher rates for calls. See Further Notice ¶¶ 12-13 and accompanying notes.

In addition to high rates, OSPs and payphone vendors may add a site surcharge to the call. For example, the IPUC recently received a price list from Oncor Communications, Inc. listing a separate aggregator location surcharge ranging from \$0.925 per minute to a maximum \$10.00 per call. Even if a consumer first calls the OSP to inquire about the cost of the call, the OSP may not include the aggregator location surcharge in the quote. The consumer then makes the choice whether or not to use the site-selected OSP without knowledge of the location surcharge.

#### BPP ADVANTAGES

If BPP can be implemented in a cost-effective manner, it offers customers several advantages. In particular, BPP would eliminate the need to enter access codes; the preferred carrier would carry the call; and OSP rates should decrease. *Id.* at ¶¶ 10-13. In addition, the IPUC believes that BPP will reduce the scope and cost of regulatory oversight. The IPUC Staff has spent hundreds of hours checking payphones for compliance with carrier access and other rules; implementing stricter consumer rules; and investigating consumers' and premise owners' complaints. The IPUC has also experienced an increase in the number of OSP complaints. Since 1989, consumer complaints about "billing and rates" have more than tripled. Relying on rate

ceilings as some parties have suggested will require continued use of regulatory resources to verify tariffs are being followed. The IPUC does not consider the imposition of rate ceilings to be a satisfactory solution.

Payphone providers have the ability to remotely program payphones to block access to alternative carriers. Complaints of this nature have been filed by premise owners as well as consumers. Within seconds, from hundreds of miles away, a payphone provider can program a payphone to unblock or block access to other toll carriers.

The pressures to pay larger commissions to the premise owners grows each year. Payphone providers charging reasonable rates and allowing access to alternative carriers may find it difficult to compete with vendors that have no concern for consumers. Changing the "customer focus" will enable providers to compete based on services and rates instead of high site commissions.

#### INSTITUTIONS OF CONFINEMENT

Under Idaho law, the IPUC does not exercise regulatory authority over OSPs and payphone providers' rates. OSPs serving Idaho correctional facilities are also allowed to provide collect calling only and block access to other carriers. Unencumbered by competitive forces or regulatory oversight, OSP and payphone providers may set any rate for calls. Neither the inmate nor the called party has any recourse available, except to not call.

When the institution is selecting an OSP, it may make its choice by evaluating which OSP provides the highest commissions. The commission is generally paid based on a percentage of

the total amount of revenue generated by inmate calls. Consequently, OSPs with lower calling rates may not be selected by the facility.

In a recent survey of fifteen county jails that had inmate payphones, the IPUC Staff found that all the jails receive commissions from their providers. Six county jails received commissions of at least 30% of the generated revenue. Eleven of the jails deposit the commissions into the county general fund, not in a fund created for the inmates or the jail. Some inmate OSPs are assessing rates that are 65% greater than the toll rates charged by fully-regulated LECs. Moreover, some OSPs set time limits on the duration of inmate calls which results in the inmate having to make more than one call to the called party. The costs of these calls are an unreasonable burden to the called party.

Opponents to BPP assert that implementing BPP in institutions of confinement will result in a staggering increase of fraud because the inmate OSP can no longer supply the institutions with “free” customer premises equipment (CPE) used to suppress or prevent fraud calls. Although the OSP may no longer supply this CPE due to lower revenues, it is more probable that the OSP would recover the cost of providing this CPE to the institution in some other fashion. Regardless, new fraud detection systems are being developed such as TeleMatic’s Conquest system that features Strike Three!; LECs “flex-ANI”; and CEECO’s Three-Way Call Detector. And as MCI and Sprint argue, if LECs incorporate fraud protection systems into their line identification databases, BPP could further improve fraud detection on all collect and third number calls. *Id.* at ¶ 45.

The IPUC agrees that fraud occasioned by inmate calls needs to be prevented. The question is, whether inmate OSPs should assess higher calling rates to the called party to recover the costs of the fraud suppression, or whether other fraud control mechanisms can economically be used to give the billed party a preference of carriers and prices? Requiring the billed party to pay high rates to cover OSP equipment costs may be like forcing the homeowners living near a correctional facility to pay for inmate security measures such as fences, guards and locking doors.

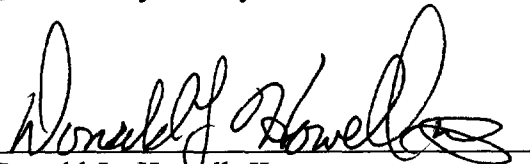
Finally, some commenters have suggested that in lieu of BPP, the Commission establish rate ceilings for inmate telecommunication services to be set at dominant carrier rates. *Id.* at ¶ 44. If rate ceilings are implemented, the OSPs may raise intrastate rates to recover interstate lost revenue, causing higher rates for the intrastate calls. The IPUC urges the Commission to carefully evaluate the comments regarding the effectiveness and costs of controlling fraud on inmate calling services.

## SUMMARY

The IPUC supports the Commission's efforts to implement BPP on an interstate basis including institutions of confinement, if BPP can be implemented in a cost-effective manner. If consumers are to benefit from the emergence of competition, the needs and demands of the consumer must be the driving force. As long as OSPs and payphone vendors perceive premise owners to be their customers, they will be driven to pay higher commissions—not set lower rates

for consumers. BPP will force OSPs and "niche" payphone providers to consider the needs of consumers first.

RESPECTFULLY submitted this 29 day of July 1994.

A handwritten signature in black ink, appearing to read "Donald L. Howell, II", written over a horizontal line.

Donald L. Howell, II  
Deputy Attorney General  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074

Street Address:

472 West Washington Street  
Boise, ID 83702

JR\N-DRFTFCC.BPP